

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ 176-3136
Administrative Law Judge Division
July 8, 2004

R E S O L U T I O N

RESOLUTION ALJ 176-3136. Ratification of preliminary determinations of category for proceedings initiated by application. The preliminary determinations are pursuant to Article 2.5, Rules 4, and 6.1 of the Commission's Rules of Practice and Procedure. (See also Rule 63.2(c) regarding notice of assignment.)

The Commission's rules and procedures which implement the requirements of Senate Bill (SB) 960 (Leonard, ch. 96-0856) are, for the most part, found in Article 2.5 of our Rules of Practice and Procedure. The rules and procedures were adopted by the Commission in D.97-11-021, which describes more fully the background to the development of these rules. Rule 4 describes the formal proceedings to which the SB 960 rules (Article 2.5) apply. Rule 6.1 requires the Commission to preliminarily determine a proceeding's category, whether the proceeding requires a hearing, and designate an Assigned Commissioner and Administrative Law Judge. Rule 6.1(a) states that the preliminary determination of category is not appealable but shall be confirmed or changed by Assigned Commissioner's ruling. Unless and until a preliminary determination is changed by such ruling, the preliminary determination of category governs the applicability of the other reforms that SB 960 requires. Rule 63.2 provides for petitioning the Commission to reassign a proceeding to another administrative law judge. Rule 63.2(c) establishes the time for filing such a petition. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

The Categories

SB 960 makes sweeping changes in many aspects of the Commission's practices in an effort to improve the quality and timeliness of Commission decision making. It creates three categories of proceedings: adjudicatory, ratesetting, and quasi-legislative. The

applicability of many of the changes it requires depends upon the category assigned to the proceeding. For example, the ex parte rules which apply differ if the proceeding is categorized as adjudicatory rather than quasi-legislative. The Legislature defined each of these procedural categories in Section 7 of SB 960. Consistent with these definitions, the rules provide that:

“‘Adjudicatory’ proceedings are: (1) enforcement investigations into possible violations of any provision of statutory law or order or rule of the Commission; and (2) complaints against regulated entities, including those complaints that challenge the accuracy of a bill, but excluding those complaints that challenge the reasonableness of rates or charges, past, present, or future.

“‘Ratesetting’ proceedings are proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities). ‘Ratesetting’ proceedings include complaints that challenge the reasonableness of rates or charges, past, present, or future. For purposes of this Article, other proceedings may be categorized as ratesetting as described in Rule 6.1(c).

“‘Quasi-legislative’ proceedings are proceedings that establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry.” (Rules 5(b), 5(c), and 5(d).)

Mixed or Unclear Category Proceedings

For a proceeding that may fall into more than one category, the rules allow parties to recommend that the Commission pick the most suitable category, or to recommend dividing the subject matter of the proceeding into different phases or one or more new proceedings, each with its own category. The rules provide that a proceeding that does not clearly fit into *any* of SB 960’s defined categories will be conducted under the rules applicable to the ratesetting category. As such a proceeding matures, the Commission may determine that the rules applicable to one of the other categories, or some hybrid of those rules, would be better suited to the proceeding.

As stated in D.97-06-071, ratesetting proceedings typically involve a mix of policymaking and factfinding relating to a particular public utility. Because proceedings that do not clearly fall within the adjudicatory or quasi-legislative categories likewise typically involve a mix of policymaking and factfinding, the ratesetting procedures are, in general, preferable for those proceedings.

ALJ/hl2

Next Steps

As stated above, this preliminary determination of category is not appealable. Once interested parties have had an opportunity to respond to the initiating party's proposed category, the preliminary determination shall be confirmed or changed by Assigned Commissioner's Ruling pursuant to Rule 6(a)(3). This Assigned Commissioner Ruling may be appealed to the full Commission pursuant to Rule 6.4(a). Parties have 10 days after the ruling is mailed to appeal. Responses to the appeal are allowed under Rule 6.4(b), and must be filed and served not later than 15 days after the ruling is mailed. The full Commission will consider the appeal.

Any party, or person or entity declaring an intention to become a party is entitled to petition for reassignment of the proceeding to another Administrative Law Judge, as described in Rule 63.2. Such a petition must be filed no later than 10 days after notice of the assignment. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

Conclusion

The Commission has reviewed the initial pleading of the utility applicants listed in the attached schedule and has made a preliminary determination of category and need for hearing, consistent with the requirements and definitions of Article 2.5 of its rules.

IT IS ORDERED that each proceeding listed in the attached schedule is preliminarily categorized, and the need for a hearing is noted.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on July 8, 2004, the following Commissioners voting favorably thereon:

/s/ WESLEY M. FRANKLIN

WESLEY M. FRANKLIN
Deputy Executive Director

MICHAEL R. PEEVEY
President

CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3136 (7/8/04)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A04-06-007 MIDWAY HEIGHTS COUNTY WATER DISTRICT, for a rehearing of Commission Resolution W-4473 that granted the Weimar Water Company a general rate increase of 63% in 2004.	*	*	*
A04-06-010 CSP TELECOM, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
A04-06-013 CONSOLIDATED AIRPORT TRANSPORTATION SYSTEMS (CATS), INC., dba XPRESS SHUTTLE, HAJIMORADI, MEHRDAD, dba LAXPRESS AIRPORT SHUTTLE/XPRESS SHUTTLE, SHAHAB, BAHRAM, dba LAXPRESS AIRPORT SHUTTLE/XPRESS SHUTTLE, for extension of passenger stage authority (PSC-5038) to include portions of Riverside and San Bernardino, Ventura counties, and San Diego County in its entirety, San Diego Airport; authority to establish a zone of rate freedom; and transfer the passenger stage authority to a California corporation, pursuant to the provisions of Public Utilities Code Sections 857, et seq.	Ratesetting	Ratesetting	NO
A04-06-014 TELESPAN CARRIER ACCESS, LLC, for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
A04-06-015 PACIFIC TERMINALS LLC, for expedited, ex parte authorization to remove and dispose of certain oil storage and transportation facilities and properties pursuant to Public Utilities Code Section 851.	Ratesetting	Ratesetting	NO

*Application for Rehearing of Resolution is assigned to Legal Division.
Categorization/Need for Hearing will be addressed as necessary if the Commission subsequently grants rehearing.

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3136 (7/8/04)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A04-06-016 KASSAB, KAY, dba CITY EXPRESS, for authority to operate as a passenger stage corporation between points in San Francisco, Alameda, Contra Costa, Santa Clara, San Mateo, and Marin counties and the San Francisco, Oakland and San Jose International Airports, and to establish a zone of rate freedom.	Ratesetting	Ratesetting	NO
A04-06-017 JEMBER, BIRU KASSA, dba SUPER STAR AIRPORT SHUTTLE, for authority to operate a passenger stage corporation between points in San Francisco, Alameda, Contra Costa, San Jose, Solano, Marin and San Mateo counties, and the San Francisco, Oakland and San Jose International airports, and to establish a zone of rate freedom.	Ratesetting	Ratesetting	NO
A04-06-018 PACIFIC GAS AND ELECTRIC COMPANY (U 39-E), to Modify the Experimental Economic Development Rate (Schedule ED).	Ratesetting	Ratesetting	YES
A04-06-019 GLOBAL UNIQUE COMMUNICATIONS INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
A04-06-020 CALIFORNIA-AMERICAN WATER COMPANY (U 210-W), for an Order for Emergency Authority to temporarily increase Upper Block Rates for water service in its Monterey District to avoid SWRCB violations and request for ex parte relief.	Ratesetting	Ratesetting	NO
A04-06-021 PACIFIC GAS AND ELECTRIC COMPANY, a California Corporation and Elena Canepa, as Trustee of the Elena Canepa Living Trust dated July 29, 1989, for an Order authorizing the Sale and Conveyance of a certain Parcel of Land in Contra Costa County pursuant to Public Utilities Code Section 851.	Ratesetting	Ratesetting	NO
A04-06-022 KERMAN TELEPHONE CO., pursuant to Public Utilities Code Section 851 through Section 854 for authority to sell a warehouse and related land.	Ratesetting	Ratesetting	NO

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3136 (7/8/04)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A04-06-023 RIPPLE SERVICES, INC., for registration as an interexchange carrier telephone corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
A04-06-024 PACIFIC GAS AND ELECTRIC COMPANY, to revise its electric marginal costs, revenue allocation, and rate design.	Ratesetting	Ratesetting	YES
A04-06-025 SOUTHERN CALIFORNIA GAS COMPANY (U 904-G), regarding Year 10 (2003 - 2004) of its Gas Cost Incentive Mechanism.	Ratesetting	Ratesetting	YES
A04-06-027 HABLA COMUNICACIONES, INC., for a Certificate of Public Convenience and Necessity to Offer Limited Facilities-Based Local Exchange, Access and Interexchange Services.	Ratesetting	Ratesetting	NO
A04-06-028 ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY, to Modify Decision 99-06-014 [A.99-02-013] and for authority to install No. 9 (gate and signal device) on the Northbound lanes of Henry Ford Avenue, at the intersection of Henry Ford Avenue and the Pier A Way, and the relocation of an existing No.9 (gate and signal device) on Henry Ford Avenue.	Ratesetting	Ratesetting	NO
A04-06-029 SPECTROTEL, INC., for a certificate of public convenience and necessity to operate as a provider of facilities-based and resold local exchange service and resold interLATA and intraLATA interexchange service within the State of California.	Ratesetting	Ratesetting	NO
A04-06-030 CITY OF PETALUMA, for an order authorizing the relocation of one at-grade crossing of the tracks of the Sonoma Marin Area Rail Transit District in the City of Petaluma, County of Sonoma.	Ratesetting	Ratesetting	NO
A04-06-031 TELECOM CONSULTANTS, INC. (U 6829-C), to Amend its Certificate of Public Convenience and Necessity to provide Limited Facilities-Based Local Exchange Telecommunications Services within California.	Ratesetting	Ratesetting	NO

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3136 (7/8/04)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A04-06-033 COUNTY OF SACRAMENTO, to construct a new grade crossing of the Central California Traction Railroad at Waterman Road in the County of Sacramento.	Ratesetting	Ratesetting	NO
A04-06-035 SAN DIEGO GAS & ELECTRIC COMPANY (U 902-M), under the Catastrophic Event Memorandum Account (CEMA) for recovery of costs related to the 2003 Southern California wildfires.	Ratesetting	Ratesetting	YES
A04-07-001 SAN LUIS OBISPO COUNTY PUBLIC WORKS DEPARTMENT, for an Order authorizing construction of an at-grade pedestrian crossing in San Miguel, California, crossing Union Pacific Railroad in the vicinity of 16th Street, County of San Luis Obispo.	Ratesetting	Ratesetting	NO
A04-07-002 SOUTHWEST GAS CORPORATION, for approval of Program Year 2005 Low-Income Assistance Program budgets.	Ratesetting	Ratesetting	YES